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Use of Force Policy 2016

2 messages

Lonowski, Jerrold <lonowski@nmml.edu>
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Wed, Jan 18, 2017 at 5:20 PM

Darlene Montoya,

Attached is the "Use of Force" policy for the New Mexico Military Institute Police Department. It was last reviewed and revised on 09/01/2016, It was presented to the officers shortly after the revision and is to be repeated yearly.

Jerry Lonowski

Chief of Police

New Mexico Military Institute Police Department

[\(575\)624 8421](tel:(575)624-8421)

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Montoya, Darlene <dmontoya@nmag.gov>
To: "Lonowski, Jerrold" <lonowski@nmml.edu>

Thu, Jan 19, 2017 at 9:15 AM

Thank you so much Chief Lonowski. Hope you have a wonderful day. Stay safe.

[Quoted text hidden]

—

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*NMMI POLICE DEPARTMENT
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I. Policy:

This department recognizes and respects the value and special integrity of each human life. Therefore, it shall be the policy of the NMMI Police Department that officers shall use only that force which is reasonably necessary to protect the sanctity of human life, preserve, and protect individual liberties.

II. Definitions:

- A. **Deadly Force:** Force which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or serious physical injury.
- B. **Non-deadly Force:** Any force used other than that which is considered deadly force.
- B. **Serious Physical Injury:** A bodily injury that creates a substantial risk or death; causes serious permanent disfigurement; or results in long-term loss of impairment of the functioning or any bodily member or organ.
- C. **Reasonable Belief:** The facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
- E. **Physical Force:** Any bodily impact, restraint, or confinement, or the threat thereof.
- F. **Less Lethal Force:** Force that is intended to cause or which is likely to cause bodily harm and in certain circumstances may result in death or great bodily injury.
- G. **Bodily Harm:** Any physical impairment of the condition of another's body which causes pain or illness.

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III. General Policy:

- A. Reasonable force may be used by an officer in the performance of duties, when:
 - 1. Necessary to preserve the peace, to prevent the commission of a criminal offense or to prevent suicide or self-inflicted injury.
 - 2. Making lawful arrests and searches, overcoming resistance to such arrests and searches and preventing escapes from custody.
 - 3. In self-defense or defense of another against unlawful violence to a person or property.
 - 4. Preventing or interrupting an intrusion on or interference with the lawful possession of property.
- B. An officer may use reasonable force to overcome resistance to the lawful performance of duties, even though there is no immediate or apparent danger, calling for self-defense.
- D. Before the application of reasonable force, officers should identify themselves and state their purpose to the offender and others present. This identification is not necessary if the officer reasonably believes his purpose and identity are already known or conditions exist which render it unfeasible to identify.
- E. Under no circumstances will the force used be greater than necessary and in no instance will deadly force be used except as stated in the Deadly Force section of this policy. This policy is intended to establish general guidelines for the Use of Force by department members. Nothing in this policy shall dictate that members always begin with the minimum level of force as circumstances may require the immediate use of less-than-lethal or deadly force options. Members are reminded, however, that the least amount of force necessary to accomplish the task shall be used.
- F. Officers will use only the force necessary to accomplish lawful objectives. Officers must exhaust every reasonable means of employing the least amount of force before escalating to a more severe application of force. There is not a specific rule fitting all cases as to how much force and means may be used, each case must be decided in the light of its own facts and circumstances. Under normal circumstances only the methods listed may be used to apply force.

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1. Verbal persuasion.
2. Defensive Techniques.
3. Department issued OC Aerosol Personal Protection Device (PPD).
4. Department issued ASP.
5. Department issued or approved firearm and ammunition.

IV. Reporting Procedures:

- A. In instances where police actions are used which result in death or great bodily harm, the reporting and investigation process will be followed in accordance with the Officer Involved Shooting policy.
- B. All officers are required to complete a Use of Force report under the following conditions:
 1. When any type of force is used against an individual by an officer. This shall include physical force, less than lethal and deadly force.
 2. When a firearm is discharged by an officer, except at the firing range.
 2. When a person in custody receives a serious injury or has received a serious injury while being taken into custody.
 4. An officer is injured by an assailant in the line of duty.
 5. The exception to this is when the only force used was a firm grip and/or use of handcuffs.
- C. Types of force will include:
 1. Joint locks.
 2. Mechanical restraints.
 3. Take downs.
 4. Use of ASP
 5. Use of OC.
 6. Use of Taser.
 7. Use of Firearms

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D. Required Reporting:

1. Anytime any level of force is used in subduing and arresting combative individuals, the details of that force shall be described in full in all applicable reports. Details shall include:
 - a) A detailed description of the events leading to the necessity for the use of police action.
 - b) The amount and type of action used.
 - c) The nature and extent of injuries and treatment rendered to the suspect(s) or officer(s).
 - d) Information describing any medical treatment including the name of the facility and the attending physician.
 - e) The identity of combatants, officers involved, and witnesses.
 - f) All other pertinent information.
2. If an officer is unable to write the report, the Chief of Police or Deputy Chief of Police will ensure the necessary report is properly prepared and forwarded.
3. The Commandant will be informed of the incident as soon as practical by the officer involved or by the Chief of Police / Captain.
4. Administrative review of critical incidents:
 - a) All reported use of force will be reviewed by the Chief of Police to determine whether:
 - 1) Department rules, policies or procedures were adhered to.
 - 2) The relevant policy was clearly understandable and effective to cover the situation.
 - 3) Department training is currently adequate.
 - b) All findings of policy violation or training inadequacies shall be noted by the Chief of Police for resolution and discipline, if necessary.
 - c) All use of force incident reports shall be filed and maintained by the Chief of Police for annual review and analysis to ascertain training and policy needs.

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E. Personal Injury incidents:

1. Photographs of the injuries will be taken, if possible, and held as evidence.

F. Medical Aid to injured parties:

1. When a person is injured because of an officer's use of force, the officer shall notify the Chief of Police or Deputy Chief of Police after seeking medical treatment for the injured person, if necessary.

G. Supervisor Responsibility (Chief of Police or Deputy Chief of Police):

- A. Will ensure that all required reports are submitted in instances where a firearm is discharged other than in training.
- B. Will ensure the completion of a Use of Force Report form for all types of force applied to a given incident.
- C. Will ensure that copies of all documents concerning all use of force incidents are submitted to the Commandant by e-mail or in person as soon as possible upon completion.

V. Deadly Force:

A. Guidelines for use:

1. Deadly force shall only be used only when a reasonable and objective assessment deems that it is necessary to protect the life of or prevent serious bodily injury to an officer or another.
2. Deadly force shall not be used when in violation of this manual or State Law.
2. In order for members to use deadly force, the suspect must have the ABILITY and the OPPORTUNITY to place the member or another in IMMEDIATE JEOPARDY of death or serious bodily injury.
 - a) ABILITY - The individual must have a weapon or physical ability that the officer believes capable of killing or causing grave injury to the officer or another.
 - b) OPPORTUNITY - The individual must be able to put into action the particular weapon they are armed with. Key points to consider are the distance between the individual and the threatened person and the position of the weapon on their person.

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- c) IMMEDIATE JEOPARDY - The fear of death or grave injury must be such that a reasonable and prudent person would consider it imminent and unavoidable.
- 3. The intent of using deadly force by police officers is to stop and incapacitate an assailant from completing a potentially deadly act.
- 4. Deadly force may be used only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious bodily injury.
- 5. An officer may use deadly force to prevent the escape of one reasonably believed to have committed a felony, but only when there is probable cause to believe the suspect poses an immediate threat of death or serious physical injury to the officer or others.
- 7. Warning shots are prohibited.
- 8. When feasible, some warning should be given prior to engaging in the use of deadly force.
- 9. When the only means of an assault on an officer is by motor vehicle, officers:
 - a) Will not fire upon the vehicle, but simply move out of the vehicles path if possible.
 - b) Must place themselves in the most tactically safe position possible.
 - d) Will not purposely place themselves in the path of a fleeing/aggressively driven vehicle to justify the use of deadly force.
- 10. Other instances when discharge of a firearm is authorized.
 - a) When an officer is under immediate attack by a vicious animal.
 - b) In order to destroy an animal that is obviously vicious or dangerous and that cannot otherwise be captured or prevented from killing or seriously injuring the officer or others. Supervisory approval shall be obtained in advance whenever possible.
 - c) Upon command of a certified firearms instructor of the NMMI Police Department during firearms training session or qualification being held in an approved firearms training facility.
 - e) During department approved competitive sporting events.

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11. Prohibited uses of deadly force:

- a) Officers shall not unreasonably or unnecessarily endanger themselves or the public in applying deadly force pursuant to this policy or state law.
- b) An officer shall not rely solely on third party reports as a basis for use of Deadly Force, without firsthand knowledge of an alleged offense.
- c) An officer shall not use deadly force in situations that would not be in accordance with New Mexico State Statute.
- d) In an attempt to apprehend fleeing felons or escapees whom are not placing the officer or another person in immediate danger of death or imminent serious bodily injury.
 - 1) At a fleeing person, except when Ability, Opportunity, and Immediate Jeopardy are satisfied.
- e) At or from a moving vehicle unless it is necessary to prevent imminent death or serious physical injury to the officer or another.
 - 1) At or from a moving or fleeing motor vehicle, except when Ability, Opportunity, and Immediate Jeopardy are satisfied.
- f) Officers shall not fire into a building or through doors unless suspect can be identified and is clearly visible and the use of deadly force is authorized by this policy.

12. All deadly force incidents will be handled in accordance with the Officer Involved Shooting policy.

B. Administrative Duty:

- 1. Immediately following an officer's involvement in an incident involving serious injury or death, the officer will be automatically placed on administrative duty or leave with pay, pending a review by the Chief of Police on the next normal work day. Unless the duty status is changed to a suspension status by the Chief of Police, the officer shall remain in an administrative duty status until such time as the matter is resolved legally and administratively.

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2. Assignment to administrative duty is non-disciplinary with no loss of pay or benefits. This duty is designed to:
 - a) Address the personal and emotional needs of the officer involved in the use of deadly force.
 - b) Insure the community that the facts surrounding the case are fully and professionally investigated.
3. An officer placed on administrative duty will be assigned to office duty in civilian clothes and placed in a position at the discretion of the Chief of Police or Deputy Chief.
4. The officer may be placed on administrative leave instead of administrative duty at the discretion of the Chief of Police. Assignment to administrative leave is non-disciplinary, with no loss of pay or benefits.
5. An officer on administrative leave shall insure his/her availability to investigators until the investigation has been concluded.
6. Officers on administrative duty or leave are authorized to carry an approved firearm, unless otherwise directed by the Chief of Police. Officers shall not should not enforce laws and make arrest except in emergency situations.
7. An officer whose action results in a deadly force incident will be required to counsel with the department appointed counselor. The counselor must make written notification that the officer is fit for duty before that officer returns to duty.
8. The department will make available and reserve the right to require counseling for officers who had involvement in a deadly force incident.

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C. Use of Firearms-General Restrictions:

1. Handguns:

- a) Armed personnel of this department may draw and display an authorized firearm during the course of an arrest or investigation only when it is deemed necessary for the safety of the officer or another. Personnel may be required to articulate the need for the drawing and display of a firearm at any time.
- b) When any firearm is drawn or displayed, it shall not be cocked unless it is a semi-automatic pistol and / or is of the type that is normally carried cocked and locked.
- c) No firearm will be unnecessarily drawn or displayed nor shall they be handled in a careless manner.
- d) Officers shall not draw / display a firearm in the police building except when so ordered by a superior officer or when an emergency exists in the building.
- e) Officers shall keep the firearm clean, lubricated, and in safe working condition at all times.
- e) No alterations to the firearm which, in the opinion of the Firearms Instructor or the Chief of Police, would make the weapon unsafe will be allowed.

D. Officers To Be Armed:

- 1. Officers shall be armed at all times while on duty except when granted permission by the Chief of Police not to be or when law or decorum prohibits.
- 2. Officers of the NMMI Police Department are permitted to be armed at all times within the State of New Mexico in accordance with NMSA 30-7-2A(3), except:
 - a) No member of the NMMI Police Department shall carry a firearm into a licensed liquor establishment to purchase or consume alcoholic beverages.
- 3. Carrying a handgun off duty is discretionary but highly recommended. When a handgun is carried off duty, it must be concealed.

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4. Failure to have a weapon will not relieve the officer of his responsibility for taking appropriate police action to crimes committed in his presence, while in he NMMI jurisdiction. However, the officer must weigh the circumstances entirely before taking any action. It may be appropriate to be an extremely good witness.
5. Armed personnel of this department shall file a detailed report through the Chain of Command immediately following the loss or theft of any department or personally owned weapon.

E. Surrendering Firearms:

1. An officer may find himself in a situation of being at the mercy of an armed suspect who has an advantage on him. Experience has shown that surrendering the officer's firearm upon demand takes away his last means of defense and does not necessarily reduce the danger to the officer. All options should be explored before surrendering your firearm.

F. Responsibility in the Event of a Discharge:

1. The discharge of a firearm by an officer in the performance of any police function shall be reported to the Chief or D/Chief of Police immediately. This includes any discharge (negligent, accidental or intentional) occurring on duty, off duty, extra duty, or overtime.
2. Should the discharge result in no injury to any person or damage to any property, the Chief or D/Chief of Police will thoroughly investigate the incident to determine if the discharge was justified. A written report will be completed and submitted to the Commandant for review.
3. Should the discharge result in death or injury to any person or damage to any property, the officer shall comply with the procedure set forth in Officer Involved Shooting policy.

VI. **Less than lethal force:**

- A. Where deadly force is not authorized, officers should assess the incident in order to determine which non-deadly technique or non-deadly weapon will best de-escalate the incident and bring it under control in a safe manner.
- B. Officers of this department are authorized to use department approved non-deadly force techniques and approved equipment for resolution of incidents, as follows:
 - 1) To protect themselves or another from physical harm.
 - 2) To restrain or subdue a resistant individual.
 - 3) To bring an unlawful situation safely and effectively under control.

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- C. Officers shall only use the type and degree of force, which is reasonable and necessary, based on the circumstances.
- D. Sworn members of this department are under oath to protect public safety. To accomplish this, members must often control or restrain larger or possibly more well trained individuals as well as large groups of people while keeping the level of force less-than-lethal.
- E. The NMMI Department shall provide each member of the department with less-than-lethal force options. These options will come in the following forms:
 - 1. Oleoresin Capsicum Aerosol (OC)
 - 2. ASP baton
 - 3. Taser

VII. Use of less than lethal force options:

A. Oleoresin Capsicum (O.C):

- 1. A chemical deterrent, may be used in defense against combative, resisting, or otherwise violent individuals. O.C. is not necessarily a replacement or substitute for otherwise less-than-lethal devices or tactics and therefore should only be used when it is determined to be the best available enforcement tool or tactic under given circumstances. Similarly, O.C. is not intended to be an alternative to the use of deadly force when such is clearly authorized and is necessary as described in this policy.
 - a) All members shall be required to complete a user certification course approved by the New Mexico Department of Public Safety Training Division (NMDPSTD).
 - b) Members shall only carry a department issued O.C. and carrying devise.
 - b) Verbal threats, by and of themselves, may not justify the use of an O.C. The threats must be actual and the member must reasonably believe that it would be unsafe to approach or be approached by the offender.
 - c) Members should remain aware that the effects of the O.C. may vary between individuals, therefore, they must remain alert to the possibility that other means may be necessary to subdue the offender.

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- d) Any misuse of the O.C. aerosol spray shall be appropriately documented by the Chief or D/Chief of Police. The O.C. canister shall be confiscated by the Chief or D/Chief of Police pending Administrative Review and Disciplinary Action.
- e) Officers shall routinely inspect the aerosol canisters to ensure they have fluid and are in proper working order.
- f) Officers shall not alter or modify the O.C. canister or trigger mechanism in any way.
- f) Officers whose normal duties may require them to make arrests shall be required to carry O.C. spray while on duty.
- g) Officers will use only the amount of O.C. reasonably needed to achieve the desired enforcement results. The use of O.C. is no longer authorized once a suspect is compliant and non-combative.

2. Decontamination:

- a) As soon as practical, any person exposed to O.C. spray shall be given the opportunity and means to neutralize the effects of the spray.
- b) Exposed persons should wash the affected areas with cold water only. Do not use any creams, ointments or bandages on the affected areas.
- c) Medical treatment shall be provided if the arrestee requests it or if deemed necessary by the officer.
- d) In all instances notify jail personnel that the prisoner has been exposed to O.C. spray and inform them of proper treatment techniques should additional treatment be required.

3. Documentation:

- a) All applicable reports will be completed before the end of the officers shift..

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B. ASP Baton

1. An ASP baton may be used when that level of force is necessary. The baton permits an officer to defend himself or others in situations where the use of firearms may not be necessary or justified.
 - a) All Officers shall be required to complete a user certification course approved by the NM DPS.
 - b) Department issue ASP batons are the only batons authorized to be carried by members of the NMMI Police Department. No other baton will be carried or used.
 - c) Members shall not alter or modify the police baton in such a way as to deviate from its basic design. The addition of a flashlight to the ASP would not deviate from the basic design of the baton.
 - d) Members may be requested to demonstrate proficiency at any time by a baton instructor. Authorization to carry a baton may be revoked if the member fails to demonstrate proficiency..
 - e) Certification to carry a baton shall be revoked for:
 - 1) Use of excessive force with the baton by an officer.
 - 2) Refusal to participate in training or respond to corrective instruction.
 - 3) Failure to certify in a regular re-certification session.
 - 4) The use or attempted use of the baton in an unauthorized manner.
 - e) The ASP baton has been adopted by the NMMI Police Department as a police tool to assist members in controlling unarmed persons who are unruly, aggressive, or actively resisting arrest.
 - f) Batons shall be used only when objectively reasonable to control an unarmed violent person while protecting the safety of the officer or another.
 - g) Batons are not designed to be used as a club or bludgeon. Baton strikes should be short and snappy to vulnerable areas of the body in accordance with department approved training.

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- h) Strikes to parts of the body capable of inflicting death (i.e., head, neck, spine and groin) shall be avoided unless deadly force would otherwise be justified.
- j) Batons shall be carried at all times when on uniformed patrol duty.

C. Taser

1. A Taser may be used when that level of force is necessary. The Taser permits an officer to defend himself or others in situations where the use of firearms may not be necessary or justified.
 - a) All Officers shall be required to complete a user certification course approved by the NMDPS.
 - b) Department issue Tasers are the only Tasers authorized to be carried by members of the NMMI Police Department. No other Taser or stun device will be carried or used.
 - c) Members shall not alter or modify the Taser in such a way as to deviate from its basic design.
 - c) Members may be requested to demonstrate proficiency at any time by an instructor. Authorization to carry a Taser may be revoked if the member fails to demonstrate proficiency..
 - e) Certification to carry a Taser shall be revoked for:
 - 1) Use of excessive force with the Taser by an officer.
 - 2) Refusal to participate in training or respond to corrective instruction.
 - 3) Failure to certify in a regular re-certification session.
 - 4) The use or attempted use of the Taser in an unauthorized manner.
 - e) The Taser has been adopted by the NMMI Police Department as a police tool to assist members in controlling unarmed persons who are **unruly, aggressive, or actively resisting arrest**.
 - f) Tasers shall be used only when objectively reasonable to control an unarmed violent person while protecting the safety of the officer or another.

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- g) All attempt should be made to deploy the Taser in the recommended target area of center mass to knees.
- i) Taser deployments to parts of the body capable of possibly inflicting death (i.e., head) shall be avoided unless deadly force would otherwise be justified.
- j) Tasers shall be carried at all times when on uniformed patrol duty.

2. Treatment of Offenders:

- A. Whenever a member is required to use a baton to effect an arrest, that arrestee shall be taken to the nearest medical facility where they are to be examined and treated (if necessary) for any injury resulting from the use of the baton.
- B. Any deployment of the Taser to a subject, the officer will summon medical personnel to remove the barbs (if still connected to suspect) and provide an immediate evaluation for medical clearance to admittance into the detention facility.

3. Documentation:

- a) The use of the ASP baton is expected to leave immediate bruises or welts on the offender. These bruises, welts or any other visible injury to the offender shall be photographed by the Chief or D/Chief of Police.
- b) All applicable reports will be completed.

4. Officers Duties and Responsibilities.

- a) Immediate action should be taken to care for the injured, to apprehend any suspects, and to protect the scene.

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C. Physical Force:

1. At times, members are confronted with situations where control is required to effect arrests or protect public safety. Attempts shall be made to achieve that control through advice, verbal warnings, or persuasion.
2. In situations where resistance to police action or a threat to life is encountered, the careful use of force is authorized by law to effect lawful objectives.
3. Department members may use physical force and need not retreat or desist when physical force is necessary to effect an arrest, prevent an escape, or overcome resistance to lawful police action.
4. Physical force is any force that is used not involving the use of a police tool. This type of force includes dialogue through mechanical techniques (defensive tactics).

VIII. **Incidents of Force Review:**

- A. The type and degree of force used shall be reasonable and based upon the facts of the situation. Only that force which is reasonable and necessary to accomplish a police function shall be applied.
- B. The use of unnecessary or unreasonable force is strictly prohibited and will not be tolerated. The use of such force will subject the member to disciplinary action as well as possible criminal and civil liability.
- C. If a use of force reasonably indicates a possible violation of NMMI departmental policy or other inappropriate conduct, the Chief or D/Chief of Police will initiate and investigation.
- D. Referrals to the Chief of Police will be automatic and take place immediately anytime there is a firearms discharge (except at the firing range or in the event of putting down an animal).
- E. The Chief of Police will be responsible for ensuring that all use of force data from all reports are regularly and accurately compiled, analyzed and reviewed.

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X. Training and Qualifications with Deadly and Non-Deadly Weapons:

- A. Officers shall receive in-service training for all authorized weapons and the department's use of force policies annually. Officers must demonstrate proficiency with each authorized weapon.
 - 1. The weapons training must be monitored by a New Mexico State certified weapons instructor.
 - 2. All training and proficiency shall be documented.
 - 2. Officers must receive training regarding the department's use of force and weapons policies prior to being authorized to carry a weapon.
- B. Officers shall carry only those weapons, deadly or non-deadly, that are authorized and registered with the department while on-duty or off-duty.
- C. Authorized weapons, deadly or non-deadly, are those with which the officer has qualified and received departmental training on proper and safe usage, and that are registered and comply with departmental specifications.
- D. The department shall schedule regular training and qualifications sessions for duty, off-duty, specialized weapons, and non-duty weapons, which will be graded on a pass or fail basis.
- E. An officer shall not be permitted to carry any weapon, deadly or deadly, with which the officer has not been able to qualify during the most recent annual qualification.
- F. An officer that has taken extended leave or suffered an illness or injury that could affect the use of firearms or non-deadly weapons ability will be required to qualify before returning to regular duty.
- G. This department does not authorize neck restraints or similar weaponless control techniques; therefore training in this area will not be provided.